

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. TSCA-08-2003-0002**

In the Matter of: )  
Montana Resources Company )  
600 Shields Avenue )  
Butte, Montana 59701 )  
a Montana General Partnership, )  
Respondent. )

**PENALTY COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**JURISDICTION**

1. This civil administrative enforcement action is authorized by Congress in section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency (EPA) regulations governing polychlorinated biphenyls ("PCBs") authorized by the statute are set out in part 761 of title 40 of the Code of Federal Regulations (CFR) and violations of the regulations constitute violations of the section 15 of TSCA, 15 U.S.C. § 2614 . The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 CFR part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated section 15 of TSCA, 15 U.S.C. § 2614, and proposes the assessment of a civil penalty as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk , U. S. EPA, Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado 80202-2466, within 30 days of receiving this Complaint. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a

public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

**FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

**QUICK RESOLUTION**

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this Complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P. O. Box 360859M  
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to the attorney listed below.

**SETTLEMENT NEGOTIATIONS**

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Brenda L. Morris at 1-800- 227-9441, extension 6891 or the address below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

**GENERAL ALLEGATIONS**

The following general allegations apply to each count of this Complaint:

8. Respondent is a general partnership between Montana Resources, Inc. and ASARCO, Inc., licensed to do business in the State of Montana.

9. Respondent is a "person" within the meaning of 40 CFR §761.3, and therefore subject to the requirements of TSCA and the regulations at 40 CFR part 761.

10. Respondent owns and operates a business located at 600 Shields Avenue, Butte, Montana (the “facility”).

11. “PCB Transformer” is defined at 40 CFR § 761.3, as any transformer that contains greater than or equal to 500 ppm PCBs.

12. An authorized EPA inspector entered the facility with the consent of Respondent, on June 9, 2003, to inspect it for compliance with TSCA and the regulations at 40 CFR part 761.

13. At the time of the inspection, Respondent was using or storing approximately thirty PCB Transformers.

#### COUNT 1

14. The PCB regulations require that PCB liquids be disposed of by the methods specified in 40 CFR § 761.60(a).

15. Pursuant to EPA’s PCB regulations at 40 CFR § 761.3, disposal includes spills, leaks, and other uncontrolled discharges of PCBs.

16. At the time of there was a spill on the concrete foundation from the number 30 transformer (General Electric Serial No. 9719-62) in the main tailings pump house area.

17. Respondent’s failure to properly dispose of PCBs from the leaking transformer as required by 40 CFR 761.60(a) constitutes one violation of TSCA Section 15, 15 U.S.C. § 2614.

#### COUNTS 2, 3, 4, and 5

18. 40 CFR 761.30(a)(ix) requires quarterly visual inspections once every three months of the year for all PCB transformers in use or stored for reuse.

19. Records of all visual inspections detailing leaks, cleanup, containment, or repair are required to be kept pursuant to 40 CFR 761.30(a)(xii).

20. At the time of the inspection, the facility’s PCB records contained no evidence that visual inspections had been conducted, or records of visual inspections kept, for the first, second, third, or fourth quarters, 2002.

21. Respondent’s failure to conduct visual inspections on a quarterly basis as required by 40 CFR 761.30(a)(ix) and/or Respondent’s failure to keep records of visual inspections pursuant to 40 CFR 761.30(a)(xii) constitutes four violations of TSCA Section 15, 15 U.S.C. § 2614.

## COUNTS 6, 7, 8, and 9

22. Pursuant to 40 CFR § 761.180(a), each owner or operator of a facility using or storing at any one time one or more PCB Transformers shall develop and maintain at the facility all annual records and the written annual log of the disposition of PCBs and PCB Items.

23. In accordance with 40 CFR § 761.180(a), the written annual document log and the annual records must be prepared for each facility by July 1, covering the previous calendar year and maintained for at least 3 years after the facility ceases using or storing PCBs.

24. At the time of the Inspection, there was no evidence that Respondent had prepared a written annual document log or the annual records for the years 1998, 1999, 2000, and 2001.

25. Respondent's failure to properly make and keep annual records and annual document logs for the years 1998, 1999, 2000, and 2001, as required by 40 CFR 761.180(a), constitutes four violations of TSCA Section 15, 15 U.S.C. 2614.

## PROPOSED CIVIL PENALTY

26. Section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. In arriving at the amount of the penalty proposed below, EPA, as required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the following factors: the nature, circumstances, extent and gravity of the violation, and with respect to respondent, the ability to pay, effect on ability to continue in business, any history of prior violations, degree of culpability, and such other matters as justice may require.

27. EPA has written a penalty policy entitled, Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990, that provides a rational, consistent and equitable method for applying these statutory factors to the facts and circumstances of specific cases. Using the policy to apply the statutory factors to the facts of this case, EPA proposes that a penalty of one hundred and forty five thousand dollars (\$145,000.00) be assessed against respondent for the violations alleged above. The penalty policy, calculation, and narrative are enclosed and incorporated as attachment A to this Complaint.

28. The Administrative Law Judge is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

To discuss settlement or ask any questions you may have about this process, please contact Brenda L. Morris, Enforcement Attorney, at 303-312-6891, or the address below.

**United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice, Complainant  
999 18<sup>th</sup> Street, Suite 300 (ENF-L)  
Denver, CO 80202**

**9/19/03**

Date

**SIGNED**

David J. Janik  
Supervisory Enforcement Attorney  
Legal Enforcement Program

**9/19/03**

Date

**SIGNED**

Martin Hestmark, Director  
Technical Enforcement Program

**9-19-03**

Date

**SIGNED**

Brenda L. Morris, Attorney  
Legal Enforcement Program  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

**IN THE MATTER OF: Montana Resources Company**  
**Docket No.: TSCA-08-2003-0002**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, was hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail, addressed to:

Montana Resources Company  
600 Shields Avenue  
Butte, Montana 59701

and

ASARCO, Inc.  
1800 Maiden Lane  
New York, NY 10038

Date: 9/19/03 By: SIGNED  
Judith McTernan, Secretary

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 19, 2003.**